

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **April 26, 2005, Work Session**

AGENDA ITEM NO.: 3

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION:

INFORMATION: **X**

ITEM TITLE: **Briefing on Proposals Related to Electing the School Board and Changing the Date of Council Elections**

RECOMMENDATION: No action requested.

SUMMARY: Council is aware that petitions have been filed for certification with the Clerk of the Circuit Court proposing the direct election of the School Board and changing the date of Council elections from May to November. Staff will be prepared to discuss both proposals with Council during its work session.

PRIOR ACTION(S): September 24, 2002; the issue of changing the date of Council elections was discussed at a work session and deferred.

March 25, 2003; following discussion on perceived advantages and disadvantages, City Council decided not to pursue changing the City Council elections from May to November.

FISCAL IMPACT: The elimination of the free standing Council election would save resources allocated to cover election costs (poll workers, etc.).

CONTACT(S): Kimball Payne, Walter Erwin

ATTACHMENT(S): Copies of proposed petitions obtained from the Clerk of the Circuit Court, City Attorney memorandum of August 5, 2002, with associated sections from the State Code, regarding changing the date of Council elections; excerpt from the State Code regarding the direct election of School Board members.

REVIEWED BY: lkp

CUNNINGHAM & DREWRY

ATTORNEYS AT LAW

105 ARCHWAY COURT

LYNCHBURG, VIRGINIA 24502

RICHARD P. CUNNINGHAM
B. LEIGH DREWRY, JR.
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FAX: (434) 846-3351*Serving the Central Virginia Community since 1975*

April 12, 2005

Phil Theisen
708 Lake Vista Drive
Forest, Virginia 24551

Re: Petitions

Dear Phil:

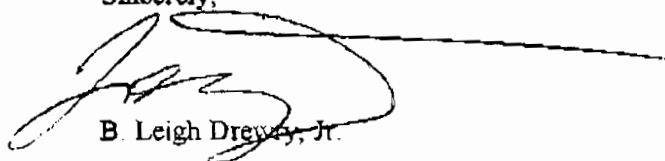
Enclosed you will find draft petitions seeking referenda for the election of the City School Board as well as moving City elections from May to November. I have taken the liberty of enclosing the appropriate code sections and have highlighted what you need to read with red.

I call particular attention to VA CODE ANN § 24.2-684.1 which requires all petitions for referenda be filed with the Circuit Court Clerk prior to circulating the petitions. The individual filing the petitions must be a qualified voter of the county or city and shall file with the petition copy a statement giving his name, residence address and if different, his mailing address, and the name of the organization, if any, which he represents in circulating the petition. The Clerk must then certify, within ten (10) days of the filing, he has received and accepted a copy of the petition and the appropriate statement. Once you have received that certification, you may begin circulating the petitions.

You will need to have all these petitions circulated, completed, and filed with the appropriate court within the nine (9) months following the certification and it will be necessary for you to get this back to the Court not less than ninety (90) days prior to the general election in which you hope to have the referenda. This year's general election for Governor and the General Assembly is a good time for these referenda and there is time to complete the circulation.

If you have any questions about the statutes, please let me know and I will see what I can do to answer your questions.

Sincerely,


B. Leigh Drewry, Jr.

BLDJr/sfk

Enclosure

PETITION

We, the registered voters of the City of Lynchburg, pursuant to VA CODE ANN § 22.1-57.2 hereby petition the Judges of the Lynchburg Circuit Court to direct a referendum be held on the question of whether the members of the Lynchburg City School Board shall be elected directly by the voters of the city.

[illegible]

I, _____, a registered voter of the City of Lynchburg, Virginia, hereby certify pursuant to VA CODE ANN § 24.2-684.1 that I personally witnessed each of the above signatures.

Signature

STATE OF VIRGINIA

CITY / COUNTY OF _____

The foregoing instrument was acknowledged before me, in my jurisdiction, this _____ day of _____, 2005, by

My commission expires: _____

(SEAL)

Notary

MEMORANDUM

To: L. Kimball Payne City Manager
FROM: Walter Erwin W.C.E. City Attorney
Date: August 5, 2002
Re: Change of Council Elections from May to November

As requested, I gathered information on changing Council elections from May to November. The information is summarized in this memo.

Section 24.2-222.1 of the State Code, a copy of which is attached, allows a city or town council to adopt an ordinance providing that council members shall be elected at the November general election for terms to commence January 1st. Elections can be held in even or odd years to coincide with federal or state elections. In making the switch to November elections, no term for a mayor or a council member may be shortened. Mayors and members of council who were elected at a May election and whose terms are set to expire on June 30th continue in office until their successors are elected and take office.

The process for switching from a May to a November election is as follows:

1. City Council holds at least one public hearing on the proposed change. Council could hold more than one public hearing and could meet with civic groups to discuss the proposed change, as well as send out mailings, etc. to maximize community input.
2. City Council adopts an ordinance changing the election date and extending the term of certain Council members.
3. The City submits the ordinance and supporting information to the United States Justice Department and requests preclearance.
4. The State Code does not allow a locality to switch to a November election during an election year. If the City wishes to switch for the 2004 Council

election, it will have to make sure the process is completed prior to the end of 2003.

If Council decides to change local elections to November, it will also have to decide whether to hold such elections in conjunction with federal elections (even years) or state elections (odd years). There are pros and cons for each. If a local election is combined with state elections, candidates could address state issues that affect localities. If combined with federal elections, the issues will be less related to each other. Combining Council elections with federal elections will require some incumbent Council members to extend their terms by six months. Combining Council elections with state elections will require some Council members to extend their terms by eighteen months.

There are also pros and cons associated with May/November elections. I have noted some of these as follows:

- If Council elections are switched to November, the City can save the costs associated with holding May elections.
- There is more voter turnout in November elections. However, local issues may take a backseat to federal and state issues.
- Under state law the filing deadline for a May election is sixty days before the election. For a November election a candidate must file by the first Tuesday after the first Monday in June. The earlier filing date for November elections could discourage some candidates from running. Also, the earlier filing date could lead to longer, more expensive campaigns.

I was able to identify five localities that have changed their elections to November – Altavista, Lexington, Norton, Poquoson and Richmond. Also, I was advised that Brookneal is starting the process to change to a November election. Charlottesville considered changing to a November election but decided not to do so.

I contacted the General Registrars in each of the localities that switched from May to November elections. The information provided by the registrars is summarized as follows:

- None of the localities experienced any difficulty making the switch from May to November elections.
- The process of changing to November elections took from six to twelve months, depending on how aggressively the locality decided to pursue the change.

- Each registrar supported the change and believes its localities will save money by switching to a November election.
- None of the localities experienced any difficulty getting the Justice Department to approve the change to November elections. In each case the locality used increased voter participation to justify the switch. The registrars prepared statistical reports showing that voter turnout is higher during November elections.

If you need any additional information or have any questions concerning this matter, please do not hesitate to contact me.

§ 24.2-222.1. Alternative election of mayor and council at November general election in cities and towns.

A. Notwithstanding the provisions of § 24.2-222, the council of a city or town may provide by ordinance that the mayor, if an elected mayor is provided for by charter, and council shall be elected at the November general election date of any cycle as designated in the ordinance, for terms to commence January 1. No such ordinance shall be adopted between January 1 and the May general election date of the year in which city or town elections regularly are scheduled to be held therein.

B. Alternatively, the registered voters of a city or town may file a petition with the circuit court of the city or of the county within which the town is located asking that a referendum be held on the question of whether the city or town should elect the mayor, if an elected mayor is provided for by charter, and council members at the November general election date of any cycle as designated in the petition. The petition shall be signed by registered voters equal in number to at least ten percent of the number registered in the city or town on the January 1 preceding the filing.

The court, pursuant to § 24.2-684, shall order the election officials on a day fixed in the order to conduct a referendum on the question, provided that no such referendum shall be scheduled between January 1 and the May general election date of the year in which city or town elections regularly are scheduled to be held therein. The clerk of the court shall publish notice of the referendum once a week for the three consecutive weeks prior to the referendum in a newspaper having general circulation in the city or town, and shall post a copy of the notice at the door of the courthouse of the city or county within which the town is located. The question on the ballot shall be:

"Shall the (city or town) change the election date of the mayor (if so provided by charter) and members of council from the May general election to the November general election (in even-numbered or odd-numbered years or as otherwise designated in the petition)?"

If members of the school board in the city or town are elected by the voters, the ballot question also shall state that the change in election date applies to the election of school board members.

The referendum shall be held and the results certified as provided in § 24.2-684. If a majority of the voters voting in the referendum vote in favor of the change, the mayor and council thereafter shall be elected at the November general election date for terms to commence January 1.

C. Except as provided in subsection D, no term of a mayor or member of council shall be shortened in implementing the change to the November election date. Mayors and members of council who were elected at a May general election and whose terms are to expire as of June 30 shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

D. In any city or town that elects its council biennially or quadrennially and that changes to the November general election date in odd-numbered years from the May general election date in even-numbered years, mayors and members of council who were elected at a May general election shall have their term of office shortened by six months but shall continue in office until their successors have been elected at the November general election and have been qualified to serve.

§ 24.2-682. Times for special elections.

A. Notwithstanding any charter or special act to the contrary, the following provisions govern the times for holding special elections. Every special election shall be held on a Tuesday. No special election shall be held within the sixty days prior to a general or primary election. No special election shall be held on the same day as a primary election. A special election may be held on the same day as a general election.

B. A referendum election shall be ordered at least sixty days prior to the date for which the referendum election is called.

C. A special election to fill a vacancy in any county, city, or town office, including school board member, regularly elected in a November general election, shall be held on a November general election day. A special election to fill a vacancy in any city or town office, including school board member, regularly elected in a May general election, shall be held on a regular May general election day.

A special election to fill a vacancy in any constitutional office shall be held promptly and in accordance with the requirements of subsection A. (Code 1950, §§ 24-44, 24-136, 24-137, 24-138, 24-139, 24-141, 24-346; 1956, c. 378; 1966, c. 115; 1970, c. 462, §§ 24.1-1(5)(c), 24.1-163, 24.1-165; 1971, Ex. Sess., c. 119; 1972, c. 620; 1973, c. 30; 1974, c. 428; 1975, c. 515; 1976, c. 616; 1977, c. 30; 1978, cc. 258, 304, 778; 1979, c. 37; 1980, c. 639; 1981, c. 367; 1982, cc. 498, 650; 1983, c. 461; 1989, c. 322; 1991, c. 592; 1991, 1st Sp. Sess., c. 12; 1993, c. 641; 2000, cc. 787, 1070.)

§ 24.2-684. How referendum elections called and held, and the results ascertained and certified.

Notwithstanding any other provision of any law or charter to the contrary, the provisions of this section shall govern all referenda.

No referendum shall be placed on the ballot unless specifically authorized by statute or by charter.

Whenever any question is to be submitted to the voters of any county, city, town, or other local subdivision, the referendum shall in every case be held pursuant to a court order as provided in this section. The court order calling a referendum shall state the question to appear on the ballot in plain English as that term is defined in § 24.2-687. The order shall be entered and the election held within a reasonable period of time subsequent to the receipt of the request for the referendum if the request is found to be in proper order. The court order shall set the date for the referendum in conformity with the requirements of § 24.2-682.

A copy of the court order calling a referendum shall be sent immediately to the State Board by the clerk of the court in which the order was issued.

The ballot shall be prepared by the appropriate electoral board and distributed to the appropriate precincts. On the day fixed for the referendum, the regular election officers shall open the polls and take the sense of the qualified voters of the county, city, town, or other local subdivision, as the case may be, on the question so submitted. The ballots for use at any such election shall be printed to state the question as follows:

"(Here state briefly the question submitted)

_ Yes

_ No"

The ballots shall be printed, marked, and counted and returns made and canvassed as in other elections. The results shall be certified by the secretary of the appropriate electoral board to the State Board, to the court ordering the election, and to such other authority as may be proper to accomplish the purpose of the election. (Code 1950, § 24-141; 1966, c. 115; 1970, c. 462, § 24.1-165; 1974, c. 428; 1975, c. 515; 1976, c. 616; 1978, cc. 258, 304; 1979, c. 37; 1980, c. 639; 1981, c. 367; 1982, cc. 498, 650; 1983, c. 461; 1991, c. 592; 1993, c. 641; 1994, c. 142; 1996, c. 297.)

Excerpt From the Code of Virginia, 1950, As Amended

Regarding the Direct Election of School Board Members

§ 22.1-57.2. Referendum on direct election of school board members by the voters.

The registered voters of any such county, city, or town may, by petition filed with the circuit court thereof, ask that a referendum be held on the question of whether the members of the school board of the county, city, or town shall be elected directly by the voters. The petition shall be signed by registered voters equal in number to at least ten percent of the number registered in such locality on the January 1 preceding its filing. Upon the filing of a petition, the circuit court shall order and require the election officials at the next general election to open the polls and take the sense of the voters therein on that question. The petition shall be filed with the court not less than ninety days prior to the general election. The clerk of the court shall cause notice of the referendum to be published once a week for the three consecutive weeks prior to the referendum in a newspaper having general circulation in the county, city, or town, and a copy of the notice shall be posted during the same time on the door of the courthouse of the county or city, or of the county within which the town is located. The question on the ballot shall be:

"Shall the method of selecting the school board be changed from appointment by the governing body (or the school board selection commission, whichever is applicable) to direct election by the voters?"

_ YES

_ NO"

The election shall be held and the results certified as provided in § 24.2-684.

(1992, c. 594.)

§ 22.1-57.3. Election of school board members.

A. If a majority of the qualified voters voting in such referendum vote in favor of changing the method of selecting school board members to direct election by the voters, then the members of the school board shall be elected by popular vote. Elections of school board members in a county, city, or town shall be held to coincide with the elections for members of the governing body of the county, city, or town at the regular general election in November or the regular general election in May, as the case may be.

B. The initial elected board shall consist of the same number of members as the appointed school board it replaces, and the members shall be elected from the established county or municipal election districts, at large, or a combination thereof, on the same basis as the school board previously was appointed. If the appointed school board being replaced has

not been appointed either on an at-large basis or on the basis of the established county or municipal election districts, or a combination thereof, the members shall be elected at large unless the governing body of the county, city, or town provides for the election of school board members on the basis of the established county or municipal election districts. If the appointed school board being replaced has been appointed at large, the governing body of the county, city, or town may establish school election districts for the election of school board members. The governing body may provide for a locality-wide district, one or more districts comprised of a part of the locality, or any combination thereof, and for the apportionment of one or more school board members to any district.

The terms of the members of the elected school board for any county, city, or town shall be the same as the terms of the members of the governing body for the county, city, or town. In any locality in which both the school board and the governing body are elected from election districts, as opposed to being elected wholly on an at-large basis, the elections of the school board member and governing body member from each specific district shall be held simultaneously except as otherwise provided in § 22.1-57.3:1.

At the first election for members of the school board, so many members shall be elected as there are members to be elected at the regular election for the governing body. At each subsequent regular election for members of the governing body, the same number of members of the school board shall be elected as the number of members to be elected at the regular election to the governing body. However, if the number of members on the school board differs from the number of members of the governing body, the number of members elected to the school board at the first and subsequent general election shall be either more or less than the number of governing body members, as appropriate, to the end that the number of members on the initial elected school board is the same as the number of members on the appointed board being replaced.

Except as provided in § 22.1-57.3:1, the terms of the members of the school board shall be staggered only if the terms of the members of the governing body are staggered. If there are more, or fewer, members on the school board than on the governing body, the number of members to be elected to the school board at the first and subsequent election for school board members shall be the number required to establish the staggered term structure so that (i) a majority of the members of the school board is elected at the same time as a majority of the members of the governing body; (ii) if one-half of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected; (iii) if one-half of the governing body is being elected and the school board has an odd number of members, the majority by one member of the school board is elected at the first election and the remainder of the school board is elected at the second election; or (iv) if a majority of the members of the governing body is being elected and the school board has an even number of members, one-half of the members of the school board is elected.

If the school board is elected at large and the terms of the members of the school board are staggered, the school board members to be replaced at the first election shall include all appointed school board members whose appointive terms are scheduled to expire on December 31 or on June 30, as the case may be, next following the first election of county, city or town school board members. If the number of school board members

whose appointive terms are so scheduled to expire is zero or less than the number of school board members to be elected at the first election, the appointed school board members to be replaced at the first election shall also include those whose appointive terms are scheduled to expire next subsequent to the date on which the terms of office of the first elected school board members will commence. If the appointive terms of more than one school board member are scheduled to expire simultaneously, but less than all of such members are to be replaced at the first election, then the identity of such school board member or members to be replaced at the first election shall be determined by a drawing held by the county or city electoral board at least ten days prior to the last day for a person to qualify as a candidate for school board member.

In any case in which school board members are elected from election districts, as opposed to being elected from the county, city, or town at large, the election districts for the school board shall be coterminous with the election districts for the county, city, or town governing body, except as may be specifically provided for the election of school board members in a county, city, or town in which the governing body is elected at large.

C. The terms of office for the school board members shall commence on January 1 or July 1, as the case may be, following their election. On December 31 or June 30, as the case may be, following the first election of county, city or town school board members, the terms of office of the members of the school board in office through appointment shall expire and the school board selection commission, if there is one, shall be abolished. If the entire school board is not elected at the first election of school board members, only the terms of the appointed members being replaced shall so expire and the terms of the appointed members being replaced at a subsequent election shall continue or be extended to expire on December 31 or June 30, as appropriate, of the year of the election of the school board members replacing them.

D. Except as otherwise provided herein, a vacancy in the office of any elected school board member shall be filled pursuant to §§ 24.2-226 and 24.2-228. In any county that has adopted the urban county executive form of government and that has adopted an elected school board, any vacancy on the elected school board shall be filled in accordance with the procedures set forth in § 15.2-802, mutatis mutandis. Notwithstanding any provision of law or charter to the contrary, if no candidates file for election to a school board office and no person who is qualified to hold the office is elected by write-in votes, a vacancy shall be deemed to exist in the office as of January 1 or July 1, as the case may be, following the general election. For the purposes of this subsection and Article 6 (§ 24.2-225 et seq.) of Chapter 2 of Title 24.2, local school boards comprised of elected and appointed members shall be deemed elected school boards.

E. In order to have their names placed on the ballot, all candidates shall be nominated only by petition as provided by general law pursuant to § 24.2-506.

F. For the purposes of this section, the election and term of the mayor or chairman of the board of supervisors shall be deemed to be an election and term of a member of the governing body of the municipality or county, respectively, whether or not the mayor or chairman is deemed to be a member of the governing body for any other purpose.

G. No employee of a school board shall be eligible to serve on the board with whom he is employed.

(1992, c. 594; 1993, c. 878; 1994, c. 723; 1996, c. 873; 2000, c. 1045.)